IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 853 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANKAR DINESHKUMAR DHARMABHAI - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DM AHUJA for the Appellant.
MR PD BHATE, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 24/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant was tried by learned Additional Sessions Judge, Banaskantha, at Palanpur, in Sessions Case No.132 of 1997, for the offence of murder of his wife, Sitaben, allegedly committed by him on 16th June, 1997, in his house, at Vankarvas, in Palanpur Town and came to be convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a further period of three months.

2. As per the prosecution case, the appellant was staying with his wife, Sitaben, in a rental house, at Vankarvas, owned by Bhagwanbhai Hemabhai. There was no child from the wedlock, which resulted into dispute between the spouses and dissatisfaction in the mind of the appellant. On 16th June, 1997, Meenaben Vashrambhai, niece of the deceased, went to the house of the deceased in between 7.30 and 8.00 A.M. and found that the house was locked. She also noticed that things were lying helter-skelter outside the house and that footwear of the deceased were lying there. Knowing the nature of the deceased, Meenaben felt that the

deceased would not go out without wearing footwear and, therefore, she felt a little suspicious. She inquired from the landlady of the deceased, Ratanben, who asked her to peep into the house through a window. She could not notice anything except a cot. She, therefore, went home and talked to her maternal grandmother, Jeeviben, who immediately rushed to the house of the deceased and, after some inquiry, broke open the lock with the help of an iron rod. After entering the house, they found that the deceased was lying in a puddle of blood with injuries on her head and other parts of the body. Police was informed and F.I.R. was lodged by Jeeviben. On the basis of the F.I.R., offence was registered and investigated. The appellant was not traceable. The police, after having collected sufficient material and having found involvement of the appellant in the offence, filed charge sheet in the Court of learned Chief Judicial Magistrate, Banaskantha, at Palanpur, who, in turn, committed the case to the Court of Sessions and Sessions Case No.132 of 1997 came to be registered.

2.1 Charge was framed against the accused at Exhibit 4, to which he pleaded not guilty and claimed to be tried and,

ultimately, came to be convicted by judgment and order dated 18.8.1998, as stated above.

3. We have heard learned Advocate, Mr. Ahuja, for the appellant and learned Additional Public Prosecutor, Mr. Bhate, for the respondent-State. We have also gone through the record and proceedings.

4. Learned Advocate, Mr. Ahuja, submitted that the case against the appellant rests on circumstantial evidence and there is no direct evidence. There is no evidence to show that the appellant was present in proximity of time and place of the incident and, therefore, he could not have been convicted. Mr. Ahuja submitted that, if the incident had occurred at the place and time, as is suggested by the prosecution, the neighbours would have known about it. Mr. Ahuja also submitted that the investigation is not properly carried out. The Investigating Agency has not probed into the direction of collecting or finding out the key to the lock, which was found having been applied to the house. Mr. Ahuja submitted that the Trial Court has taken into consideration the contradictions

in deposition of hostile witnesses proved through the Investigating Officer, which ought not to have been done. The circumstances of non-availability of the appellant after the incident has been reasonably explained by the appellant in his further statement by stating that he was on his job with Banas Dairy during the night and when he reached his home, he found the door locked. He, therefore, went to the Bazar and while he was returning, he learnt that his wife was murdered and his in-laws were looking for him and were after his life. Mr. Ahuja submitted that barring the circumstances of the incident having been occurred in the house of the appellant and non-availability of the appellant, there is no circumstance against the appellant which can be said to be considered as sufficient to link the appellant with the crime. The case, therefore, has not been properly appreciated by the Trial Court and the benefit ought to have been given to the appellant and, therefore, the appeal may be allowed.

5. Learned Additional Public Prosecutor, Mr. Bhate, has submitted that the appellant and the deceased were the only persons staying together in the house. There is no material to show

that on the fateful night, the appellant was not in the house and that he was on his job and, therefore, the necessary inference would be that during the night he would have been in the house. Mr. Bhate submitted that through evidence of Ambaben and Jeeviben, it is established that the appellant had a motive against the deceased. They did not have child from the wedlock and, therefore, the appellant used to ill-treat the deceased. It is also indicated that the appellant, even after knowing that his wife was murdered, fled away from the place and came to be arrested after 49 days. Ordinary conduct would be to go home and inquire as to what had happened. Assuming for the moment that his explanation of he having learnt that his in-laws were looking for him and were after his life is true, the conduct would have been either to go to his own house and take shelter and seek protection or to go to Police and seek protection. Instead, he fled from the place and was arrested only after 49 days. Mr. Bhate submitted further that the medical evidence established that it was a homicidal death attributable to a weapon like axe. However, Mr. Bhate could not explain how the muddamal weapon can be said to have been used in commission of the crime when there was no

blood mark found on it by the F. S. L. Mr. Bhate submitted that, taking an overall view of the matter, the Trial Court's conclusion is just, legal and proper and may not be interfered with.

6. We have examined the record and proceedings. We find that P.W.1-Jeeviben (Exhibit 8), who is the first informant and the mother of the deceased, P.W.2-Meenaben (Exhibit 11) , who is the person who had firstly noticed the house as locked, and P.W.10-Ambaben (Exhibit 27), who is the sister of the deceased, have supported the prosecution case, whereas the landlady-Ratanben and neighbour-Bhikhabhai Dahyabhai (Exhibits 13 and 14, respectively) have not supported the prosecution case and are treated as hostile witnesses.

7. P.W.1-Jeeviben, in her deposition, states that, on being told by Meenaben, she went to the place of incident, broke open the lock and found the deceased lying dead in the house in a puddle of blood. She goes on to say that the deceased did not have any child from her wedlock with the appellant with a life of about five to six years. During cross-examination, certain questions were

put to show that she is not an eye-witness (which has never been her case). Some minor omissions are shown during cross-examination, which are not attributed by her in the F. I. R.

7.1 P.W.10-Ambaben Vashrambhai, sister of the deceased (Exhibit 27), has stated in her deposition that the deceased used to off and on complain that the appellant and his parents were ill-treating her. They also did not provide grocery in the house. She says that the deceased met her two days prior to the incident and told her that she was not given food for two days. She has been cross-examined where it is indicated that she has improved her original version regarding food not being provided to her for last two days. However, we notice that this contradiction has not been proved through the deposition of the Investigating Officer.

8. From the depositions of these two witnesses, it is clear that the relationship between the appellant and the deceased were strained because of want of child from the wedlock and that the deceased was being ill-treated. From the cross-examination of Ambaben, all that is brought out is that the statement before police

does not contain the allegation regarding the deceased being not given food for two days, but the other allegations regarding physical violence and harassment, not providing grocery, etc. remained as they were. The resultant effect is that the prosecution has been able to prove the motive part.

8.1 It was indicated by learned advocate for the appellant that the Trial Court has not relied on the evidence of Jeeviben and Ambaben in this regard, as they are contradictory. In our opinion, it is an error on the part of the Trial Court in coming to this conclusion. There are no contradictions. On the contrary, their depositions are complementary to each other in the sense that Jeeviben speaks about the reason, namely, want of offspring from the wedlock, whereas Ambaben speaks about the result, namely, ill-treatment and physical violence and, therefore, the motive part stands established against the appellant.

9. Now, let us examine the other circumstances.

9.1 There is no dispute that the appellant and the deceased

were the only persons staying in the premises where the incident has occurred. The necessary inference, therefore, would be that, during night hours, the appellant and the deceased would be at home. A defence is taken in the further statement that the appellant was not in the house and was on his duty with Banas Dairy, but there is no material in support of this defence of alibi. The appellant, therefore, cannot be said to have discharged his onus of proving alibi. The inference, therefore, would be that he was in the house when the incident had occurred and, if there is nobody else in the house except the appellant and his wife and if the wife is found to have died a homicidal death, the necessary inference is that the appellant is responsible for the homicidal death of the deceased.

9.2 Incidentally, we may record that the question of the deceased having met a homicidal death has not been disputed by the appellant and, rightly so, because the medical evidence is very clear. The injuries are of a serious nature caused on vital parts of the body like head and brain substance was damaged. Under the circumstances, homicidal death has been established by the

prosecution.

9.3 It is also a strong circumstance that, after the incident, the appellant fled from the town. It is not that he was unaware about the incident. He has stated in his statement that he learnt about the incident, but he absconded because he also learnt that his in-laws were after his life. The appellant came to be arrested after about 49 days. The natural conduct of an innocent person would be to rush to the house once he learnt that his wife was murdered or to rush to his own family members for his protection, if he has learnt that his in-laws were after him or to rush to police for that very purpose. The appellant did nothing and absconded for 49 days. This conduct is also a strong circumstance against the appellant. In our opinion, therefore, the chain of circumstances is established to link the appellant with the crime and the Trial Court cannot be said to have committed an error in recording conviction. May be the Trial Court may have erred in discussing and reasoning out certain circumstances, but the ultimate conclusion appears to be just, legal and proper.

10. It is true that the Investigating Officer has not probed the case in the direction of collecting the key to the lock which was applied to the house. But that would not abrogate the effect of the evidence that we have discussed earlier in this judgment. Similarly, the fact that the weapon did not contain blood stains also would not be of a any help to the appellant. Once it is found that the death is homicidal and committed with a sharp edged weapon, the weapon could be anything, it may not be even traced, but the circumstances do link the appellant with the crime and, therefore, these defects in investigation cannot be considered as fatal to the prosecution case.

11. For the foregoing reasons, we do not find any merit in the appeal. The appeal must fail and stands dismissed and the judgment and order of the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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